



**MINUTES
FREMONT PLANNING COMMISSION
REGULAR MEETING OF NOVEMBER 6, 2003**

CALL TO ORDER: Chairperson Cohen called the meeting to order at 7:00 p.m.

PRESENT: Chairperson Cohen, Wieckowski, Harrison, Sharma, Natarajan

ABSENT: Thomas, Weaver

STAFF PRESENT: Jeff Schwob, Interim Planning Director
Larissa Seto, Senior Deputy City Attorney Seto
Barbara Meerjans, Associate Planner
Momoko Ishijima, Planner I
Norm Hughes, City Engineer
Ron Fong, Senior Civil Engineer
Alice Malotte, Recording Clerk
Walter Garcia, Video Technician

Interim Planning Director Schwob announced that technical difficulties with the broadcast and sound systems would cause tonight's meeting to not be broadcast live, but this meeting would be rebroadcast Friday, November 7th, at 7:00 p.m. and Monday, November 10th, at 9:00 a.m. Some microphones were not available for tonight's meeting, so some of the Commissioners would have to share. The sound from the microphones could not be modulated, so the speaker might need to move away or move closer to the microphone, as was necessary. There would be no stenocaptioning, as well.

APPROVAL OF MINUTES: Regular Minutes of September 25, 2003, were approved as submitted.

CONSENT CALENDAR

THE CONSENT LIST CONSISTED OF ITEM NUMBERS 1, 3, 4 AND 5.

Commissioner Natarajan asked that Item 3 be taken separately for a vote.

IT WAS MOVED (HARRISON/WIECKOWSKI) AND CARRIED BY THE FOLLOWING VOTE (4-0-1-2-0) THAT THE PLANNING COMMISSION TAKE THE FOLLOWING ACTION ON ITEM 3.

Item 3. **PACIFIC COMMONS WETLANDS PHASE 3 – Cushing Parkway – (PLN2004-00009)** - to consider an extension to a preliminary grading plan for the Pacific Commons Wetlands Phase 3, located south west of Auto Mall Parkway and the future Cushing Parkway Bridge, in the Industrial Planning Area. An EIR and Supplemental EIR were previously prepared for the Pacific Commons project.

HOLD PUBLIC HEARING;

AND

FIND THAT THE EXTENSION OF THE PRELIMINARY GRADING PLAN FOR THE PACIFIC COMMONS WETLANDS RESTORATION PHASE 3 WAS ANALYZED AS PART OF THE EIR AND SUPPLEMENTAL EIR PREPARED FOR PACIFIC COMMONS IN THE 1996 AND 2000 AND FIND THAT THERE ARE NO SIGNIFICANT CHANGES IN THE EXTENSION OF THE PRELIMINARY GRADING PLAN FOR PHASE 3 RESTORATION THAN WERE PREVIOUSLY ANALYZED IN THESE DOCUMENTS;

AND

FIND PLN2004-00009 IS IN CONFORMANCE WITH THE RELEVANT PROVISIONS CONTAINED IN THE CITY'S EXISTING GENERAL PLAN. THESE PROVISIONS INCLUDE THE DESIGNATIONS, GOALS AND POLICIES SET FORTH IN THE GENERAL PLAN'S LAND USE, OPEN SPACE, AND NATURAL RESOURCES CHAPTERS AS ENUMERATED WITHIN THE STAFF REPORT;

AND

APPROVE PLN2004-00009, AS SHOWN ON EXHIBIT "A", SUBJECT TO FINDINGS AND CONDITIONS ON EXHIBIT "B".

The motion carried by the following vote:

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| AYES: | 4 – Cohen, Harrison, Sharma, Wieckowski |
| NOES: | 0 |
| ABSTAIN: | 1 – Natarajan |
| ABSENT: | 2 – Thomas, Weaver |
| RECUSE: | 0 |

IT WAS MOVED (HARRISON/NATARAJAN) AND UNANIMOUSLY CARRIED BY ALL PRESENT THAT THE PLANNING COMMISSION TAKE THE FOLLOWING ACTIONS ON ITEM NUMBERS 1, 4 AND 5.

- Item 1. BACCARAT RAILROAD LLC – 41075 Railroad Avenue – (PLN2000-00059)** – to consider an appeal regarding the completeness of an application for a Preliminary Grading Plan and an Initial Study and to consider a Preliminary Grading Plan for a 15-acre site zoned I-L Light Industrial located in the Irvington Planning Area. (Continued from October 9, 2003.)

CONTINUE TO THE FIRST REGULARLY SCHEDULED PLANNING COMMISSION MEETING IN JANUARY 2004.

- Item 4. DOUBLE WOOD GOLF COURSE – Avalon Heights Terrace – (PLN2004-00036)** – to consider a Community Development Director's report on the annual review of the Development Agreement for the Double Wood Golf Course in the Warm Springs Planning Area. An EIR, subsequent EIR and addendum were previously approved for the Double Wood project. This review is not a project as defined in the CEQA Guidelines, Section 15368, no further action is required and none of the conditions of CEQA Guidelines, Section 15162, requiring additional environmental documents exists.

HOLD PUBLIC HEARING;

AND

FIND THE ANNUAL REVIEW OF THE DEVELOPMENT AGREEMENT IS NOT A PROJECT AS DEFINED IN CEQA GUIDELINES SECTION 15168 AND THAT NO FURTHER ENVIRONMENTAL DOCUMENT IS NEEDED FOR THIS REVIEW;

AND

FIND AND DETERMINE ON THE BASIS OF SUBSTANTIAL EVIDENCE IN THE RECORD OF THE PROCEEDINGS, THAT FOR THE REVIEW PERIOD OF 2002-2003, THE DEVELOPER HAS COMPLIED WITH ITS OBLIGATIONS UNDER DEVELOPMENT AGREEMENT PLN2002-00273 BETWEEN THE CITY OF FREMONT AND DOUBLE WOOD GOLF COURSE, LLC.

- Item 5. KOREAN BBQ BEER & WINE – 47894 Warm Springs Boulevard (PLN2004-00043)** - to consider a Conditional Use Permit for sale and onsite consumption of beer and wine in the Warm Springs Planning Area. This project is categorically exempt from CEQA, per section 15301, Existing Facilities.

HOLD PUBLIC HEARING;

AND

FIND PLN2004-00043 IS EXEMPT FROM CEQA PER SECTION 15301, EXISTING FACILITIES;

AND

FIND PLN2004-00043 IS IN CONFORMANCE WITH THE RELEVANT PROVISIONS CONTAINED IN THE CITY'S EXISTING GENERAL PLAN. THESE PROVISIONS INCLUDE THE DESIGNATIONS, GOALS AND POLICIES SET FORTH IN THE GENERAL PLAN'S FUNDAMENTAL GOALS AND LAND USE CHAPTER AS ENUMERATED WITHIN THE STAFF REPORT;

AND

APPROVE PLN2004-00043, AS SHOWN ON EXHIBIT "A", SUBJECT TO FINDINGS AND CONDITIONS ON EXHIBIT "B."

The motion carried by the following vote:

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| AYES: | 5 – Cohen, Harrison, Natarajan, Sharma, Thomas, Weaver, Wieckowski |
| NOES: | 0 |
| ABSTAIN: | 0 |
| ABSENT: | 2 – Thomas, Weaver |
| RECUSE: | 0 |

PUBLIC COMMUNICATIONS

ORAL COMMUNICATIONS

PUBLIC HEARING ITEMS

Item 2. **UNION STREET CONDOMINIUMS – 3536 Union Street – (PLN2001–00312)** – to consider a Preliminary and Precise Planned District for eight condominiums on .54 acres located in the Irvington Planning Area. This project is categorically exempt from CEQA under Section 15332, In-fill. (Continued from October 9, 2003.)

Satish Narayan, representing the owner, stated that all issues had been complied with and he concurred with all of staff's conditions.

Commissioner Natarajan asked in what ways was the project's design superior to other projects in the area, as was stated in his letter.

Mr. Narayan replied that this was the first building in the neighborhood that would have two stories, would have a relationship to the streetscape, but would not be imposing. The trim and the façade veneers would make this project superior to what currently existed on the street. Several trees would be retained. This was a project of good quality.

Commissioner Natarajan asked if the brick veneer would be behind the six-foot walls that enclosed the patios.

Mr. Narayan stated that the veneer would be in front of the entrances and the front windows.

Commissioner Natarajan noted that only the front door would be seen from the street, so the veneer would be behind the patio wall.

A discussion ensued concerning the patio enclosures and where the brick veneer was to be used. It was agreed that approximately two feet of the veneer might be seen above the patio wall.

Commissioner Natarajan asked what the "excellent sidewalk design" would be and how wide was it.

Mr. Narayan stated that the sidewalk would go around the trees at the High Street corner. The sidewalk would probably be brushed concrete with an eight-inch concrete polished band. It would be a little different from the generic City sidewalk, more upscale. It would be ten feet wide, of which five feet would be paved and five feet would be landscape strip.

Chairperson Cohen announced that the applicant had indicated that he wanted to reply to the Commissioners' comments, so he asked the Commissioners to make their comments before he closed the public hearing. He continued that the design was a step in the right direction and was an improvement over what was currently in the area. However, "what you had is a very big box with some articulations." This was a more suburban, town home feel than an urban village atmosphere and it did not set the tone for that area. He cited City projects that conformed to the row house or urban town home vision that the Commission had for the area. He suggested that, by following those design examples, the applicant might also be able to add density.

Mr. Narayan believed that it was a philosophical difference. The walls and the roof "umbrellas" created depth and shadow lines and eliminated the boxy look. The two-story units at the end and three-story units in the middle would also address the boxy feeling. Because of staff feedback, the original design had been scaled back to address the bulkiness of the building. He agreed to work with staff to address any positive feedback from the Commission.

Commissioner Sharma referred to the color rendering and stated that the building did look like a box. He asked if the roof could be changed to break up the boxy feeling.

Mr. Narayan stated that the roof plan showed the variations that lessened the boxy feel of the design.

Chairperson Cohen asked what the pitch of the roof was.

Mr. Narayan replied that the roof pitch was four and twelve.

Commissioner Harrison asked if the setbacks would accommodate firefighting equipment.

Associate Planner Meerjans replied that the fire department had approved the setbacks.

Commissioner Natarajan asked if Condition B5 concerned the patio enclosure that had been discussed.

Associate Planner Meerjans stated that a six-foot wall was required between this project and the neighboring property. However, six-foot walls had been proposed for the patios. The condition applied to both, but was a requirement for the separation of the parking area and the house next door. The patio walls could be reduced.

Commissioner Natarajan asked if the wall with the lockable, front, full-height door could be reduced. She asked if this requirement was from the R-G ordinance.

Associate Planner Meerjans replied that the wall could be reduced, but she would have to research the height of the door. The security ordinance required a lockable door.

Interim Planning Director Schwob asked if the lockable door was on the house or on the gate to the patio enclosure.

Associate Planner Meerjans stated that the plan read as though the door would be in the patio enclosure wall. The requirement for private open space came from the R-G ordinance.

Commissioner Wieckowski asked if there was some flexibility about the open space requirements if a finding was made for superior design in this planned district.

Associate Planner Meerjans agreed.

Commissioner Natarajan agreed that the discussion was philosophical when it came to setting the tone for Irvington. High Street and Union Street were fairly close to the future B.A.R.T. station. Facing the town houses to the street and improving the sidewalks was a step in the right direction. The applicant was saying the right things, but they had not translated into the design currently before the Commission. A suburban model was being forced into an infill project and most infill projects were more urban in nature than suburban. As Chairperson Cohen alluded, there were many more interesting ways to deal with an infill project. This corner site had not been addressed. Instead walled enclosures had been created that actually obstructed movement between the street and the front doors. She noted many more reasons why nothing in the design was superior in terms of the site planning or the architecture.

Mr. Narayan replied that staff was aware of the conceptual plan for the area and had guided the development of the elements that were being brought before the Commission. He asked for positive direction from the Commission and promised to try to address the Commissioner's concerns.

Commissioner Natarajan stated that the improvements she would look for were:

- Basic improvement to the approach to the architecture, should read as individual townhouse units
- Articulation and modulation were not there
- Materials could be varied, rather than "stucco, stucco and more stucco"
- Veneer was in wrong location; it would be behind stucco wall
- What building looked like from street at street level was important
- Building could be brought forward to provide more creative use of site
- Landscape design was talked about, but had not been included

Mr. Narayan stated that a landscape plan had been included in the Commissioners' packets, but that it would be coming back to the Commission at a later date. He opined that parking could not be met, along with the open space requirements, with a higher density.

Commissioner Harrison asked if the applicant if he would be willing to change his design if he could obtain higher density. He agreed that this design was superior to the vacant lot, but acknowledged that the other Commissioners were probably looking at how it would fit into the area 20 years down the road.

Chairperson Cohen and **Commissioner Sharma** stated that parking and open space requirements could be adjusted, in return for superior design, because this was a planned district.

Mr. Narayan stated that he was willing to try to incorporate the Commission's comments into the design.

Chairperson Cohen asked if the applicant had anything else to say in closing.

Mr. Narayan asked that this project be approved.

Chairperson Cohen closed the public hearing.

Chairperson Cohen began by suggesting that this project be continued to give the applicant an opportunity to redesign the project. He encouraged the applicant to try to add one or two more units to the project and suggested that staff help the applicant to navigate through “the antiquated constraints” that still existed in the City code.

Commissioner Natarajan asked staff if additional units were possible in this project.

Interim Planning Director Schwob stated that the project was at Step One density, this project predated the changes in the Housing and Land Use Elements. Under the current General Plan, ten units would be permitted. However, the parking and open space requirements might be tough to meet.

Chairperson Cohen asked the will of the Commission.

Commissioner Wieckowski asked if a finding could be made that the off-street parking could be allocated to the parking requirements, if two more units could be added.

Interim Planning Director Schwob replied that modifications to the parking requirements had already been taken advantage of by the applicant. One of the four following findings could be made to further reduce the need for parking:

- Proximity to transit
- Proximity to amenities and services
- Available on street parking
- Some type of tenancy that would require less than normal parking

Commissioner Natarajan asked if live/work units would be appropriate here.

Interim Planning Director Schwob answered that mixed use was allowed on major streets. He asked what the classification of the streets were in the General Plan.

Associate Planner Meerjans stated that High Street was a collector street.

Chairperson Cohen noted that every time a project had been continued for redesign, the project was better for the City and for the applicant.

Commissioner Natarajan clarified that the Commission did not want to see a “tweaking” of the design, but that it expected a complete redesign to be brought back.

IT WAS MOVED (HARRISON/NATARAJAN) AND CARRIED BY THE FOLLOWING VOTE (5-0-0-2-0) THAT THE PLANNING COMMISSION CONTINUE TO ALLOW APPLICANT TO WORK WITH STAFF AND INCORPORATE THE SUGGESTIONS MADE BY THE COMMISSION.

The motion carried by the following vote:

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| AYES: | 5 – Cohen, Harrison, Natarajan, Sharma, Wieckowski |
| NOES: | 0 |
| ABSTAIN: | 0 |
| ABSENT: | 2 – Thomas, Weaver |
| RECUSE: | 0 |

Chairperson Cohen called for a ten-minute recess at 7:45 p.m.

Chairperson Cohen called the meeting back to order at 7:55 p.m.

Item 6. GEOLOGICAL STUDIES – Citywide - (PLN2004-00069) - to consider amendments to the Municipal Code of the City of Fremont, in particular Title VIII (Planning and Zoning) and Title VII (Building Regulations), to clarify that the City Engineer and Chief Building Official have the authority to require geotechnical reports for developments in hillside areas. The Planning Commission will also consider a recommendation to rescind the Mission Peak General Plan Amendment and Mission Peak Zoning Overlay (PLN2001-00363) and repeal the Mission Peak Landslide Development Policy. A negative declaration has been prepared for this project, and is available for review at the Planning Department at 39550 Liberty Street, Fremont, during normal business hours. (Please note that this November 6th meeting is taking place in lieu of the Oct. 23rd meeting that was tentatively scheduled for the consideration of this item.)

Interim Planning Director Schwob stated that City Council had adopted the General Plan amendment and had introduced the ordinance for the Zoning Landslide Overlay, but it was never adopted. He introduced Norm Hughes, City Engineer, and Ron Fong, Senior Civil Engineer, who would make the presentation.

Commissioner Harrison disclosed that he had spoken to several area residents who had expressed the concerns that had been noted in the handout to the Commission. He had also directed a resident to Chairperson Cohen regarding speaking before the Commission.

Commissioner Sharma also disclosed that he owned property in the hill area and, there was no conflict of interest as his property was one of 5,000 properties that would be subject to the proposed Zoning Text Amendment.

City Engineer Hughes stated that a landslide of 27 million cubic yards had occurred in the Mission Peak area in 1998. It was one-quarter mile wide and one mile long and changed the elevation roughly 1,300 feet from the top to the bottom. It was caused by approximately seven years of higher than normal rainfall. City consultants performed a study and presented it as the Geolith report. The City created the Mission Peak Development Policy to provide implementation of the recommendations in the report. The report identified different zones of risk and the Policy specified how the City would react to development proposals in those different zones of risk. Public hearings and study sessions were held concerning the Zoning Text Amendment. This final proposal was in response to the comments made and would clarify the authority of the City Engineer and the Chief Building Official to require geological and/or geotechnical studies for development in this area when local, state or federal information was available about the risk of earth movement or if deemed necessary through physical observation. Some kinds of development that did not require a grading permit and were not subdivisions fell “below the radar” of requiring a geological or geotechnical report, i.e., a large addition, a pool or even a new house on an existing lot. This Zoning Text Amendment would incorporate everything in the Mission Peak General Plan Amendment and the Mission Peak Zoning Overlay (which would be rescinded) and the Mission Peak Landslide Development Policy (which would be repealed). Community concerns and the City's responses were:

- Validity of Geolith Report, especially since it had been created five years ago
 - The report was peer reviewed by over 40 professionals at the local, state and federal level. The report recommended that it be reviewed in five years. An update to Map 3 was performed and the recommendations have been implemented. Land along the creek side had been changed from Zone 3 to Zone 2, which involved 18 parcels.
- Treatment of landslide area residents should be equal to everyone else in hill area
 - This proposal addressed the entire hillside area. Landslide susceptibility ranking for the entire hillside area is cost prohibitive, as the Mission Peak area is a fraction of the whole hillside area. The State is due to release updated seismic hazard maps in 2004, which will identify earthquake induced landslide risk areas. State law will

require that development in these zones be studied and peer reviewed for risk of earth movement and will cover the entire hillside area.

- Repair of landslide area
 - To date, no technical or economical solution for dealing with the slide to prevent it from moving further has been identified, as it is too large. The City did repair the creek that had been filled by the landslide to prevent flooding.
- Clarification of administrative details and procedures
 - Procedures for staff were being defined concerning how to respond relative to studies or physical observations and would replace the detailed policy of procedure found in the current landslide policy.

The issue of records retention and the Public Records Act was not within the purview of the Planning Commission, but a matter for the City Council. Movement from public lands to private lands was also the purview of the City Council.

Commissioner Wieckowski asked what other technical or scientific problems were raised.

City Engineer Hughes replied that no technical problems had been identified. The public had raised questions regarding the scientific methods used. The Geolith report used different techniques than were used by some of the site-specific soils studies performed for specific subdivision developments that were used for structure design purposes.

Senior Civil Engineer Fong added that during the peer review process, technical comments were made and were addressed in the final report.

Commissioner Wieckowski asked if the City had a maintenance plan for Alliso Creek, which had been widened and deepened to remove debris. What mechanism did the City have to require private landowners along the creek to keep the riparian channels clear, in case long-term rainfall was again experienced.

Senior Civil Engineer Fong replied that the creek was essentially self-regulating, due to the repair performed by the City and the rainfall no longer ponded up. The landowners were required to maintain the creek, per the wetband easement agreements on their properties. However, the landslide had started on City lands.

City Engineer Hughes stated that there was nothing to prevent the landowner from keeping the creek free of debris.

Commissioner Harrison understood that the Mission Peak area residents believed that surveying the entire hillside would not be a costly process, as was stated above. He asked if the State maps could be used and would staff or an outside consultant be expected to enter that data.

City Engineer Hughes stated that identification of the risk to be shown on the State's maps would be performed and incorporated into the City's database, the GIS system. That information would be used as a resource when reviewing every development proposal. Staff would enter that data by parcel into the GIS system.

Senior Civil Engineer Fong stated that, through a collaboration with the State, the City's GIS system would be able to "talk" with the State's GIS and it would be a minor and seamless overlay.

Commissioner Harrison asked if this information should be a part of the recommendation.

City Engineer Hughes stated that the Zoning Text Amendment stated that the City could use local, state or federal maps. It would not be a large staff effort to convert the map into the City's GIS system.

Commissioner Sharma brought up the "wish list" created by the people who were going to speak later during the public hearing. It sounded that, by using the State's updated seismic map, the rest of the hillside properties would be identified, as requested on the "wish list." He asked if the State map would also answer concerns about all similar properties being identified similarly. In his opinion, almost all of the property owners' concerns would be addressed.

City Engineer Hughes replied that a study would not be performed, but the state data would be installed in the City's GIS system, which had already been done for parcels in the northern and central areas of the City. All properties would be identified similarly, relative to the State maps. The other local maps would also remain in the database.

Commissioner Natarajan asked, until the City received the updated State maps, would any of the current information be used or would it be removed from the GIS system.

City Engineer Hughes stated that as more localized data was received, it would still be used, along with the State maps. No data would be removed from the database.

Commissioner Natarajan asked if the overlay that had placed parcels in Zone 3 or Zone 4 was to be removed. When and how did staff know to require further geological or geotechnical studies? She asked if these properties were automatically flagged in the Tidemark permit system, as well.

City Engineer Hughes replied that it would be removed as a zoning overlay, but the data would be kept in the GIS system to alert staff when a peer review might be in order. If any of the state data indicated that the parcel was within an earthquake induced landslide area, a liquefaction zone or an earthquake fault zone, the state required that a peer review be undertaken. If the City had local information, or knew through physical observation, about projects that fell outside of the normal subdivision and CEQA processes, they would be automatically identified for peer review. Planning and Engineering would analyze any other parcels that were not covered by state or local data to decide if peer review and a report was needed. For someone who just came to the Planning Department counter, if his parcel had no state or local data, staff would tell him that it would be analyzed with the development application, which was how the process currently worked. If there was nothing to trigger concern, the project would move forward without a geotechnical report.

Interim Planning Director Schwob stated that staff at the front counter could see all of that information right away.

Commissioner Harrison asked if the hierarchy was that State maps were at the bottom layer and local maps were higher. If the state and local facts showed no report or peer review was necessary, would that information be added to the system concerning that particular parcel.

City Engineer Hughes stated that the State maps would take precedence over local maps, because state law required that a report and peer review be performed. Parcels not covered by the State map would be dealt with through local maps. A parcel that had been identified as needing no further study or peer review would be noted as such in the GIS system.

Commissioner Wieckowski why not keep the current data to build on and incorporate the state data when it was available, rather than rescinding the General Plan Amendment and

the Overlay. What would be the adverse effect of not rescinding the General Plan Amendment and the Overlay?

City Engineer Hughes replied that things had moved forward since the last study. With the state essentially performing the studies for the city, there was no need to rezone half the city. The Geolith report was more detailed, and he was not sure what areas would be identified by the State as earthquake induced landslide hazard areas. Staff did not feel that it was necessary. There would be no adverse engineering effect. However, labeling a property as being in a landslide susceptible area when there was the potential to clarify that it was not susceptible by the upcoming State map was unfair to the current property owners.

Commissioner Sharma opined that nothing would change; the issue was how property would be tagged. All the data would still be available.

City Engineer Hughes replied that he was correct.

Chairperson Cohen asked if the designations of Landslide Zone 3 and Landslide Zone 4 were based upon the Geolith report and if parcels within those designations required geotechnical studies. If the requested amendments and overlay were rescinded, would Zones 3 and 4 still exist. Was a geological study to address landslide and earth movements be performed before development was to occur? Did any City official have the discretion to not order a geological study in Zones 3 and 4? If the Zoning Text Amendment were passed, would the geological study still be nondiscretionary? Would it still have to be performed? The wording in the Zoning Text Amendment used the word "may" rather than "shall", which sounded like the City official would have the discretion to order or not order a geotechnical study. It seemed that more protection for property owners would be created by this amendment.

City Engineer Hughes stated that he was correct regarding how Zones 3 and 4 came about. Zones 3 and 4 were not zoning but were identified as areas of risk on the geologic map and would still stay in the GIS system. No City official could decide if a geological study was not appropriate in Zones 3 and 4. Yes, the geological study would have to be done, if the GIS system showed a parcel to be within Zone 3 or Zone 4. He agreed that the word "may" was discretionary but was not applicable to Zones 3 or 4 in the Mission Peak Landslide area, but would allow professional judgment on properties based on other information. Staff believed that more protection would be provided concerning development in the hillside area.

Chairperson Cohen opened the public hearing and announced that he would allow the area landowners to make their presentation in an organized fashion.

Ted Rue stated that the homeowners within the study area were concerned that their properties would not be similarly portrayed as other hillside homeowners on the City's website, in the archives and in the GIS database. Many of the properties included in the Geolith study were far from the landslide, had nothing to do with it and would never be impacted by the landslide. In order to have a uniform enforcement among all of the hillside properties, it was imperative that staff identify the remaining hillside properties with similar landslide potential. He believed that the future State map should inexpensively allow staff to identify and enter into the GIS system all hillside properties that were at risk. He read statements from City Engineer Hughes and Senior Civil Engineer Fong that stated the State map would eclipse the Geolith map and allow it to be retired.

Deborah Rue spoke concerning how the State map would be implemented by staff. If staff was reactive, it would refer to new information only if a property applied for a building permit. If staff was proactive, it would combine the state's data with its own, which should identify all properties at risk in the hillside area. If staff was reactive, all properties in the Geolith study area would remain unfairly labeled in the GIS database with a geotechnical study required.

All other properties would be shown in the database as needing additional research. Only this week were the unfairly labeled properties removed from the web site after being shown on it for nearly five years. Letters remained in the archive files for each of the properties and staff had selectively enforced issues related to landslide susceptibility to only their properties, ignoring the rest of the hill area. Uniform statements for all of the hillside properties should be placed in the database. She asked for a time commitment as to when all properties would be updated and for an update meeting to evaluate staff's progress made to that point.

Smita Shanker addressed the issue of the letter (Landslide Susceptible Notice) mentioned earlier, dated February 11, 1999, that had been included in the archive files of the original 97 properties (a copy of which was in the Commissioners' packets) and identified as being in Zones 3 and 4 in the Geolith report. The letter remained in the original 97 properties even though the properties have been reduced to 60. This letter was an example of selective enforcement, as staff had no intention of placing similar letters in other similar hillside properties' files as they became identified. The minimum retention time for such archiving was two years and it had been well over four years. She requested that the letter be removed from all files.

Gary Parikh, geotechnical engineer, believed that there were several areas in the Zoning Text Amendment (ZTA) that were troublesome. The ZTA placed all the authority (equal to a blank check) in the hands of the City Engineer to require geological studies at his discretion, based upon notes in the data system. No mention was made of who would interpret suggestions noted in the properties' files, such as a Certified Engineering Geologist. A mere physical observation put staff in the position to perform certain duties for which they were not qualified. He warned that the City could be open to arguments and potential litigation. He did not believe that creating a geologic hazard zoning map would be unreasonably costly or an exhaustive task. Published data could be used, such as from USGS and Cal GS. This kind of map was common in many cities and could be updated, as current data became available. He understood that the City had this information, but it was not available to the general public. Most realtors use JCP maps and these could be different from what was in the City's database.

Steve Chan addressed the response of the City on page 3, Item C of the staff report. Staff had overstated the question. The question was to remediate the toe of the slide, which required a different answer. A statement was made that it was up to the landowners along the creek to remediate it. However, when the City remediated the creek, it was for just one landowner using public funds. Cost benefit analyses should be made by the City policymakers, not by an outside consultant. He suggested that an ad hoc committee be set up consisting of City personnel, homeowners, federal officials, state officials to investigate what avenues might be available. Other avenues were available for funding, such as federal and state agencies. This would protect the public.

Commissioner Harrison asked if the speaker had provided the alternative funding information to the City.

Dr. Chan stated that the City had not asked for it.

Commissioner Harrison asked him to provide his information to the City.

Laura Cera addressed the Argus article that had included comments by citizens who feared that rescinding the Landslide Area Development Policy would open the floodgate for future development. These fears were unfounded, as developers were completely outside the scope of the proposal before the Commission. The current proposal did not provide more opportunity for development than was allowed at the current time. She believed that a modification of the H-I (Hillside) Ordinance provided more regulation for buildings based on the information highlighted by the study area. The selective enforcement of 19 homeowners,

as proposed by staff, did not support the civil code. Everyone in the hillside still would not be treated the same and in a like manner.

Daisy Wong summarized the homeowners' requests, as follows:

- Complete identification of similar properties for the entire hillside area using State maps
- Depict similar properties on the GIS database similarly, regardless of the Geolith study and the USGS studies
- Remove Landslide Susceptibility letters from files, which predated the adoption of the interim development policy

Lorna Jaynes stated that she initially had planned to ask that the overlay not be removed without an EIR. However, after listening to the information presented, she felt ambivalent and thought that, perhaps, the Zoning Text Amendment was a reasonable alternative. She suggested alternative wording for a portion of the Zoning Text Amendment that would provide a bit more boundaries on the discretion of the City Engineer when determining how and when land was constrained. She asked if the State maps would provide the same kind of notice that the Mission Peak Overlay did.

City Engineer Hughes stated that the State maps would be public and he expected that interested organizations would reference them. No notices would be sent by the City to property owners, based upon the State maps.

Chairperson Cohen asked the speaker about her proposed language change, Exhibit A.

Ms. Jaynes replied that the suggested language referred to Section 21821.B and stated that "Lands which are determined to be a landslide, in the path of a landslide, at risk of a landslide or an area of slope instability, as determined by the City Engineer." was not entirely clear in that the determination of the City Engineer would apply to all of those things. It also was not entirely clear that all the documents used to make that determination applied to all of them. It also added wording about the professional judgment of the City Engineer.

Chairperson Cohen tended to agree with her analysis.

Ms. Jaynes believed that some boundaries on the discretion of the Engineer were needed to provide a remedy to claims of abuse of discretion, should that ever happen.

Richard Godfrey declined to speak, deferring his time to others.

Larry Goodman feared a second Mission Peak landslide, which could be far more catastrophic than the 1998 landslide, if long-standing rains and an earthquake occurred at the same time. Prospective buyers of property in the area should be somehow notified of a potential landslide hazard. He believed that not maintaining the amendment, the overlay and the development polity would open the City to a high degree of liability. A specific mandate should be included to notify people of those properties when they were sold. He felt that the letters should stay in the property files as a prevention for future lawsuits.

Chairperson Cohen asked the City Engineer to respond to the statements made by the public.

City Engineer Hughes replied that the State maps would be incorporated as soon as possible into the City database system. All similar properties would receive similar treatment. The letter issue was within the purview of the City Council, as was notice relative to the 19 homes. The public money received for restoration of the creek was based upon the flood hazard. If other financial options were available, he asked that he be notified of them.

Commissioner Wieckowski asked if the language suggested by Ms. Jaynes was sufficient to address the concerns raised with regard to evaluations made by the City Engineer or Building Officials.

City Engineer Hughes stated that the rewording might still be of concern to the speakers. However, City Engineers did not intend to operate out of their special expertise. The act of requiring further studies would be based upon reports by geologists or geotechnical engineers. The City's peer review geologist would be available, if there were questions about what should be required.

Senior Deputy City Attorney Seto added that under State law, the requirement for City staff and City officials was a reasonable standard. For that reason, she did not agree that "professional judgment" should be included. Regarding the deletion of ". . . is capable of reasonable mitigation," the word, "mitigation" was more typically used in geologic and geotechnical types reports. Using the word "correction" could be interpreted to mean that the entire slide should be fixed, whereas, a mitigation was a different standard to make a development possible and safe.

Commissioner Harrison asked if the Senior Deputy City Attorney approved the proposed language changes with her corrections.

Senior Deputy City Attorney Seto stated that she would be happy to review the suggestions. The other changes did not appear to be other than semantic differences.

Commissioner Wieckowski asked if it was necessary to add language concerning a reference to consulting with technical experts or was it understood. It seemed that the concern was that the language needed to be tightened up a bit.

Senior Deputy City Attorney Seto replied that if a specific type of consultant was named, it would start an advanced peer review process, as they would have to review all of the documents, when the City Engineer and Building Official, through their own professional experience, would have seen situations and be familiar with the area and would be able to determine that it might be best to simply require the geologic report, which would then be performed by a registered professional geologist.

Commissioner Harrison asked for the definition of "development proposed." Would that be anything that required a building permit? If a property was deemed to need a report, was there an appeal process?

City Engineer Hughes replied that the current Mission Peak Landside Policy required that if there was a proposal for a house addition of 1,000 square feet or more, a report would be required. A similar example would be used to help define what constitutes a development proposal that would trigger such a concern.

Senior Deputy City Attorney Seto stated that there was always an appeal process, according to the City of Fremont Municipal Code.

Commissioner Sharma encouraged Dr. Chan to contact the City with information about his alternative funding sources. He was certain that staff or any of the Commissioners would be happy to listen to any suggestions about grants.

Commissioner Natarajan stated that many issues raised by the speakers were not within the purview of the Commission. However, she was interested in getting the administrative process underway as quickly as possible, in terms of being clear and precise about what the property owner needed to do. They should be given a scope of what needed to be done,

along with a timeline and how much it would cost. If that was done, she was comfortable with where this was headed.

Chairperson Cohen suggested that Ms. Jaynes' proposed language be included in the recommendation to the City Council, with the exception of the word "professional." He added that he would have liked to see the word "correct" as a substitute for "mitigate" to be included.

Commissioner Wieckowski asked that the Zoning Text Amendment be voted on separately and that Ms. Jayne's wording be included with "professional" removed and returned back to "mitigation" rather than "correct."

IT WAS MOVED (WIECKOWSKI/HARRISON) AND CARRIED BY THE FOLLOWING VOTE (5-0-0-2-0) THAT THE PLANNING COMMISSION HOLD PUBLIC HEARING;

AND

RECOMMEND PLN2004-00069 TO THE CITY COUNCIL IN CONFORMANCE WITH EXHIBIT "A" (ZONING TEXT AMENDMENT) AS MODIFIED PER THE LANGUAGE SUGGESTED BY LORNA JAYNES, EXCEPTING THE LANGUAGE AS TO "PROFESSIONAL" AND "CORRECTION.

AND

FIND PLN2004-00069, A ZONING TEXT AMENDMENT, IS IN CONFORMANCE WITH THE RELEVANT PROVISIONS CONTAINED IN THE CITY'S GENERAL PLAN. THESE PROVISIONS INCLUDE THE GOALS AND POLICIES SET FORTH IN THE GENERAL PLAN'S LAND USE, NATURAL RESOURCES AND HEALTH & SAFETY CHAPTERS, AS ENUMERATED WITHIN THE STAFF REPORT;

AND

RECOMMEND THE CITY COUNCIL FIND THE INITIAL STUDY CONDUCTED FOR PLN2004-00069 HAS EVALUATED THE POTENTIAL IMPACTS FOR THIS PROJECT THAT COULD CAUSE AN ADVERSE EFFECT -- EITHER INDIVIDUALLY OR CUMULATIVELY -- ON WILDLIFE RESOURCES. THERE IS NO EVIDENCE THE PROPOSED PROJECT WOULD HAVE ANY POTENTIAL FOR ADVERSE EFFECT ON WILDLIFE RESOURCES;

AND

RECOMMEND THE CITY COUNCIL ADOPT THE DRAFT NEGATIVE DECLARATION WITH ACCOMPANYING CERTIFICATE OF FEE EXEMPTION AND FIND IT REFLECTS THE INDEPENDENT JUDGEMENT OF THE CITY OF FREMONT, AND FINDING THERE IS NO SUBSTANTIAL EVIDENCE THAT THE PROJECT, AS MITIGATED, WILL HAVE A SIGNIFICANT EFFECT ON THE ENVIRONMENT;

AND

FIND THE PUBLIC NECESSITY, CONVENIENCE AND GENERAL WELFARE REQUIRE THE ADOPTION OF ZONING TEXT AMENDMENT BECAUSE THE ZONING TEXT AMENDMENT (PLN2004-00069) IMPLEMENTS THE CITY'S GENERAL PLAN.

The motion carried by the following vote:

| | |
|----------|--|
| AYES: | 5 – Cohen, Harrison, Natarajan, Sharma, Wieckowski |
| NOES: | 0 |
| ABSTAIN: | 0 |
| ABSENT: | 2 – Thomas, Weaver |
| RECUSE: | 0 |

Commissioner Harrison added that the Commission wished to recommend to the City Council that, as suggested by Dr. Chan and Dr. Rue.

Commissioner Wieckowski stated that he would not approve the recommendation, as he preferred that the City's work be maintained and the State map be incorporated into the database when it was available.

Chairperson Cohen stated that, in his opinion, the hillside was sacred ground and homes should never have been allowed to be built there in the first place. One must live in the area that one chose to live in. In this case, this was a sensitive, geologic area and the owner had to bear the risks. However, he was sympathetic to the issue of fairness. It sounded like the protections would be strengthened.

IT WAS MOVED (HARRISON/SHARMA) AND CARRIED BY THE FOLLOWING VOTE (4-1-0-2-0) THAT THE PLANNING COMMISSION RECOMMEND TO THE CITY COUNCIL THE RESCISSION OF THE MISSION PEAK GENERAL PLAN AMENDMENT, THE WITHDRAWAL OF THE MISSION PEAK ZONING OVERLAY (PLN2001-00363), AND THE REPEAL OF THE MISSION PEAK LANDSLIDE DEVELOPMENT POLICY;

AND

A COMMITTEE BE FORMED BETWEEN THE CITY AND THE HILLSIDE RESIDENTS TO EXPLORE ANY ADDITIONAL RESOURCES AVAILABLE TO REMEDY THE CURRENT SITUATION AND TO WORK TOWARD ALLOWING SIMILAR PROPERTIES TO BE TREATED SIMILARLY.

The motion carried by the following vote:

| | |
|----------|--|
| AYES: | 4 – Cohen, Harrison, Natarajan, Sharma |
| NOES: | 1 – Wieckowski |
| ABSTAIN: | 0 |
| ABSENT: | 2 – Thomas, Weaver |
| RECUSE: | 0 |

MISCELLANEOUS ITEMS

Information from Commission and Staff:

- Information from staff: Staff will report on matters of interest.
- City Council action on referral regarding ordinance to limit big box retailers with grocery.

Interim Planning Director Schwob drew the Commission's attention to the memorandum regarding the Big Box Ordinance on which the City Council decided not to proceed.

Chairperson Cohen believed that the sentiments of the Commission should be expressed and it still had the authority to make a recommendation to the City Council, if it so chose. However, he felt that the Commission's actions may have been misconstrued by the City Council. The Commissioners could not make a decision, based upon the many questions they had.

Commissioner Wieckowski noted that the November 1st article in The Argus alluded to the fact that the big box issue was important to local voters and local decision makers, and he believed that local land use issues should be considered and how they economically impacted local smaller development. Perhaps additional tax dollars could be generated from a different type of development. He would have preferred that expert testimony be brought before the Commission on this issue that was the same one confronting many municipalities up and down the State, as well as the City of Fremont. He wanted to avoid sending locally earned dollars to a large corporation located in another state. He would like to continue to study this issue.

Commissioner Natarajan agreed with both comments made by the Commissioners. Many cities in California were trying to develop some kind of an ordinance to deal with the big box issue. She wanted some kind of indication of where the City's vision was headed regarding the retail component. It was short sighted to allow every kind of retail without looking at the quality of that retail and researching how it functioned.

Commissioner Sharma agreed that the issue should be discussed and the withdrawal was premature. The City was receptive to business and he disagreed with idea that any business that wished to sell in the City should be allowed to do so. "Bring it back and let the Commission talk about it."

Commissioner Harrison stated that the timing could not have been worse. Questions and facts needed to be discussed, as was the Commission's right. However, the previous discussion included issues that should not have been brought up. Many of the Commissioners' questions were not answered, such as the SKU question, and all of the facts needed to be available when it was discussed again.

Chairperson Cohen stated that he had been influenced by Commissioner Harrison's questions concerning the implications that the ordinance could have had on "the Costcos of the world." He since later learned that this ordinance would not have affected the proposed Costco. In his opinion, the City Council did not need to be asked for permission to discuss this issue and the Commission had the right to request that staff agendaize a study session to discuss the issue.

Commissioner Harrison noted that, according to the memo, no more work would be done on this issue. If the Commission agendaized a study session, would staff come to it with work the Commission had already seen?

Chairperson Cohen believed that the Commission had the legal authority to authorize a study session, although he clarified that he was not interested in a confrontation with the City Council. He suggested a study session with the Economic Development Director that concerned how general development would affect the quality of life in the City and how it would affect other areas as a practical matter in terms of tax generation.

A discussion ensued concerning the issue of the City being "business friendly" and the implications of a big box ordinance.

Chairperson Cohen asked what the effects of a big box ordinance would have on Costco and the negotiations with the City, as reported in The Argus. He was not aware that Costco was negotiating with the City.

Interim Planning Director Schwob stated that Catellus and Costco had been in negotiations and Costco had agreed to build a store there.

Another discussion ensued regarding how a big box ordinance would have affected Costco or any other large retail store and the City's attitude toward development. It was put forth that the Commission's decisions on land use was hurting the retail aspect of the City. It was also opined that this reputation came about because the Commission insisted upon quality developments, which was not necessary when Santa Clara Development was involved. No complaints were heard from them. Every growing city goes through this phase. Eventually, every developer would know what the City wanted. Downtown Pleasant Hill was mentioned as an example of good city planning. It was suggested that study sessions be used to hammer out agreements with a developer and those projects could then be brought before the public during the hearing. It was decided to recommend a study session concerning big box issues.

Senior Deputy City Attorney Seto stated that staff had been directed by the City Council and City Manager not to expend any other staff resources to pursue this issue. She proposed other items for study sessions, such as the housing element implementation, that could see the Commission through the end of the year. The Bay Area Economic Forum had hired a consultant to generate a report with regard to the economic impacts of big box retailers. When this new information became publicly available after the first of the year, it might be a catalyst for a study session that would provide the information that the Commissioners were seeking.

Commissioner Harrison suggested that the Commissioners consider what subjects on which they would like to have study sessions and present them to staff for comments. In January, staff could suggest topics and they could be agendaized throughout the 2004 year.

Commissioner Wieckowski stated that he would like to ask the City Manager and the City Council to allow a study session by the Commission concerning the effects of different types of retail, including big box, in the City.

- Upcoming Study Sessions:

Interim Planning Director Schwob announced that second unit and mixed-use proposals were ready to present to the Commission in study sessions. He suggested a study session at the November meeting concerning second units and a study session in December on mixed use standards.

It was agreed that study sessions before those meetings would be appropriate.

Commissioner Natarajan asked if either of these sessions would include the shopping center conversions.

Interim Planning Director Schwob replied that would come before the Commission at its next meeting. He noted that Commissioner Harrison had requested information about when the Commission had the authority concerning Site Plan and Architectural Review. A chart would be prepared and presented to the Commission during one of the study sessions for discussion.

- 2004 Tentative Planning Commission Calendar.

Interim Planning Director Schwob asked that the Commissioners look at the calendar, so that it could be brought before the City Council for approval.

Commissioner Wieckowski asked how the other Commissioners felt about the meeting scheduled for February 12th, a State and Federal holiday.

Interim Planning Director Schwob said that HARB had requested that the Commission not schedule meetings on the first and third Thursdays of the month, as HARB met on those days.

It was suggested that the February 12th meeting stay on the calendar. If later there were few or no items scheduled, it could be cancelled. The calendar was agreed to by all present.

Interim Planning Director Schwob announced that the annual Boards and Commissions appreciation event was scheduled to occur in the Council Chambers on January 12th, with responses due by December 12th. Election of officers needed to be agendaized and the annual dinner needed to be scheduled. The Mayor had announced that he intended to make Planning Commission appointments on December 9th.

It was decided to elect officers during the December 11th meeting. The annual dinner would be discussed at the next meeting.

- Information from Commission: Commission members may report on matters of interest.

Chairperson Cohen stated that it was the unanimous consensus of the Commission to forward the request to City Council.

Commissioner Natarajan asked why the Centerville Redevelopment, Bay Street streetscape, and the Washington Overpass design had not come before the Planning Commission. She understood that the developer for Centerville was chosen not for its financial ability to do the project, but on the site plan and architecture they had brought forth.

Interim Planning Director Schwob replied that regarding Centerville, a developer needed to be chosen who had the ability to make a proposal. At the request of the City Council, the process changed and the consultants were interviewed by the City Council. All proposals were in more detail than was requested. Concerning Bay Street, the City Council directed staff to gather input and to obtain direction from the Council before proceeding with a more detailed review of the process. Washington and Paseo Padre grade separations were before the City Council during a study session concerning details about how to proceed. The actual plans on all these projects would eventually come before the Commission.

Commissioner Natarajan asked that the Planning Commission be informed of these kinds projects.

Chairperson Cohen mentioned that the City of Los Gatos had the highest quality strip mall that he had seen. He suggested that the Commissioners look at it, so that they were aware of what was possible using the strip mall model.

Meeting adjourned at 10:50 p.m.

SUBMITTED BY:

Alice Malotte
Recording Clerk

APPROVED BY:

Jeff Schwob, Secretary
Planning Commission